

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOWARD S. BAMETT

Appeal 2007-2461
Application 09/827,547
Technology Center 2600

Decided: July 2, 2007

Before JAMESON LEE, SALLY GARDNER LANE, and ROMULO H. DELMENDO, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Statement of the Case

This is a decision on appeal by an applicant under 35 U.S.C. § 134(a) from a rejection of claims 1-5 of application 09/827,547. We have jurisdiction under 35 U.S.C. § 6(b).

References Relied on by the Examiner

Howell	U.S. Patent 5,767,897	June 16, 1998
Maruyama	U.S. Patent 5,489,938	Feb. 6, 1996

The Rejection on Appeal

The Examiner rejected claims 1-5 under 35 U.S.C. § 103 as unpatentable over Howell and Maruyama.

B. Issue

Has the Applicant shown error in the rejection of claims 1-5?

C. Summary of the Decision

The Applicant has not shown error in the rejection of any one of claims 1-5.

D Findings of Fact (Referenced as FF. ¶ No.)

1. The invention is directed to a portable teleconferencing system. (Specification 1:22-24).

2. According to the Applicant, conventional teleconferencing systems are cumbersome because to move the equipment a user has to move one or two carts of equipment and to operate the equipment the user has to position himself or herself away from the equipment to use controls which are separate from the equipment. (Specification 1:11-17).

3. According to the Applicant, the invention makes use of a cart designed as a podium; all necessary teleconferencing equipment are located on one cart; and space is provided in a working area for a user to run all the equipment from that location. (Specification 2:24 to 3:3).

4. Claim 1 is the only independent claim and reads as follows:

A portable system for teleconferencing presentations by a presenter, comprising in combination:

- a cart forming a podium;
- a computer located in or on the cart;
- a touch panel interface with the computer, positioned on the cart, visible to the presenter; and
- a CODEC operationally attached to the computer,

wherein the computer, the touch panel and the CODEC can be used without removing them from the cart.

5. Claim 5 does not recite a proximate working area for the presenter, from which all equipment may be controlled, but does recite a touch panel interface which is positioned on the cart.

6. The term “CODEC” is not defined in the Applicant’s Specification, but it is also not the source of any dispute between the Examiner and the Applicant. It is commonly known as a device or program capable of performing encoding of digital data by compression techniques and decoding of digital data by decompression techniques. The “CO” part of the term can be thought of as representing “Compression” and the “DEC” part of the term can be thought of as representing “Decompression.”

7. The Examiner determined that Howell discloses all of the elements of claim 1 except that it does not explicitly teach a “portable” system for teleconferencing. (Answer 3:15-21 and 4:6-7).

8. Figure 1 of Howell, the only drawing illustrating Howell’s podium, shows what appears to be four caster wheels, one at each of the four bottom corners of the Howell’s rectangular podium 23.

9. There is, however, no mention in the written text of Howell’s disclosure of any wheel for the podium 23 or a portable nature of podium 23.

10. The Applicant has not challenged the Examiner's finding that a computer is located in or on Howell's podium 23, that a touch panel interface with the computer is positioned on Howell's podium 23 and visible to the presenter, that a CODEC is operationally attached to the computer, and that all of Howell's disclosed computer, touch panel interface, and CODEC can be used without being removed from podium 23.

11. Maruyama discloses a portable teleconferencing apparatus of the type described by the Applicant as conventional teleconferencing system. Although all the equipment is on a single cart with wheels, the presenter evidently must position himself or herself away from the apparatus to use a keyboard placed on a separate desk to control the devices. (Maruyama, Col. 4, ll. 59-63).

12. Maruyama does not disclose a touch panel interface positioned on the cart 24 supporting the system controller 35 which includes a CODEC. Although Maruyama discloses a cart carrying teleconferencing equipment, it does not disclose a "cart forming a podium."

E. Principles of law

Drawings in a utility patent can be cited against the claims of a utility patent application even though the feature shown in the drawing was unintended or unexplained in the Specification of the patent. *In re Aslanian*, 590 F.2d 911, 914, 200 USPQ 500, 503 (CCPA 1979).

Although patent drawings are not working drawings, things which patent drawings clearly show cannot be disregarded and description for purposes of anticipation can be by drawings alone. *In re Mraz*, 455 F.2d 1069, 1072, 173 USPQ 25, 27 (CCPA 1972).

One cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981).

F. Analysis

The Examiner determined that Howell discloses all of the elements of claim 1 except that it does not explicitly teach a “portable” system for teleconferencing (FF. 7). Claim 1’s preamble recites “[a] portable system,” and the body of claim 1 includes the element “a cart forming a podium.”

Because Howell does not “explicitly” teach a portable system, the Examiner relied on Maruyama for its express teaching that teleconferencing equipment can be placed on a cart to facilitate movement, an idea the Applicant himself specifically acknowledged in the background portion of the Specification as preexisting prior art (Specification 1:14-15).

Reliance on anything other than Howell to meet the portability requirement of claim 1 is unnecessary. As the examiner determined, Howell does not “explicitly” teach a portable system. There is no discussion anywhere in Howell regarding portability or wheels on its podium. But anticipating disclosure need not be explicit and does not require descriptive text. Figure 1 of Howell clearly illustrates wheels on the bottom of the podium carrying all the teleconferencing equipment. Drawings in a utility patent can be cited against the claims of a utility patent application even though the feature shown in the drawing was unintended or unexplained in the specification of the referenced patent. *In re Aslanian*, 590 F.2d at 914, 200 USPQ at 503. Even if the structures at the four bottom corners of Howell’s disclosed podium are not wheels, which we find they are, their resemblance to wheels reasonably would have suggested to one with

ordinary skill in the art the use of wheels on Howell's podium. Even ornamental design may teach or reasonably suggest functional features. *Id.* As was indicated by the Court of Customs and Patent Appeals in *In re Mraz*, 455 F.2d at 1072, 173 USPQ at 27, although patent drawings are not working drawings, things which patent drawings clearly show cannot be disregarded and description for purposes of anticipation can be by drawings alone.

The Applicant argues that although Howell's podium 23 appears to have some sort of casters, they are not numbered or mentioned in the Specification. The argument is without merit. As has been explained above, the drawing alone illustrates the wheels without need for additional description in the written text. The drawing is itself a part of the prior art disclosure. The Applicant asserts that Howell's disclosure suggests that the podium 23 is "built into a room in which it is used" (Brief 3:25). If that is taken as meaning that podium 23 is fixedly bolted to the floor, the assertion is rejected because the Applicant has shown no basis for such a reading by one with ordinary skill in the art. If the assertion is taken to mean that there is no need to move the podium from room to room, the argument is misplaced because wheels on the podium would still substantially enhance portability within the room. On page 8 of the brief, the Applicant specifically argues that Howell's podium is not portable because the lessons of the presenter are taught in a single room. The argument is without merit because the wheels on the podium permit it to be moved easily from place to place within the room, to a suitable location, and even to a different room, if necessary, for storage or any other reason. The podium remains portable by reason of the presence of the wheels, whether or not there is a specific need

to move it at any time. The Applicant's claimed invention is not a process including an actual step of moving anything.

The Applicant further argues that "a podium with wheels still does not a 'cart' make." (Brief 3:28-29). No explanation or evidence whatsoever has been presented to support that conclusory argument. The Applicant has not specially defined the term "cart" in the Specification. The word is properly construed according to its broadest reasonable interpretation in the English language, consistent with the Specification. It is a broad term that encompasses just about any support surface for holding up articles, which has some means for facilitating lateral motion. Howell's podium is a support surface for holding up a director controller 22, control section 24, video display 26, CODEC 30, and computer 32. If it is equipped with wheels, which we find that it is, it can reasonably be deemed a "cart." Thus, the Applicant's argument that adding wheels to a podium "does not a cart make," is rejected insofar as it is applied to Howell's wheeled podium.

The Applicant further advances several erroneous arguments which are not based on features recited in any of the Applicant's claims. Specifically, on page 4 of the brief, in lines 7-16, the Applicant attempts to distinguish his claimed invention from Howell based on what Howell discloses that is not disclosed by the Applicant. The arguments are without merit because the features Howell additionally discloses beyond the invention disclosed by the Applicant do not serve to distinguish the Applicant's claimed invention from that part of Howell's disclosure which reveals the same. As was most succinctly stated by the Court of Appeals for the Federal Circuit in *In re Hiniker*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998): "The name of the game is the claim." The

Applicant's arguments are misplaced because they have not been connected to a proper basis in the Applicant's claims. For instance, the Applicant has not shown that his claims necessarily exclude all the additional features disclosed by Howell but not in the Applicant's Specification. Indeed, the use of the open-ended transition term "comprising" leaves the claim open to unrecited components.

As explained above, the Examiner relied on Maruyama for a teaching already disclosed in and suggested by Howell. The Applicant has had an opportunity to argue and actually has argued the issue pertaining to the apparent "wheels" illustrated in Howell's Figure 1. Accordingly, it is not necessary to consider the Applicant's arguments directed to Maruyama. But nonetheless, we will, as an alternative basis for sustaining the rejection.

The examiner relied on Maruyama for a single teaching, that all the equipment necessary for teleconferencing can be placed on a cart, and nothing else. The Applicant has not challenged that determination. Instead, the Applicant advances two lines of misplaced arguments.

First, the Applicant attempts to distinguish Maruyama from the claimed invention based on what Maruyama discloses but the Applicant's specification does not disclose, e.g., a cabinet with multiple compartments, a table which can be retracted but when opened is supported by a handle, a camera which can be positioned over the table, a retractable table that is used as a base for a document camera, a retractable document camera. The argument ignores the fact that the additional disclosures of Maruyama do not undermine its general teaching that the teleconferencing equipment can be collectively supported on a single cart, the only teaching relied on by the Examiner. Also, no assertion has been made by the Applicant that the

invention of claim 1, which recites “comprising,” excludes from the teleconferencing system any feature disclosed by Maruyama. Accordingly, the argument is without merit.

Secondly, the Applicant attempts to distinguish Maruyama from the claimed invention based on features which are required by claim 1 but not disclosed by Maruyama, for instance, the podium nature of the cart as is required by Applicant’s claim 1. The Applicant points out multiple advantages of his claimed cart forming a podium as compared to Maruyama’s cart which does not also serve as a podium for the presenter. For instance, in Maruyama’s system, the presenter has to move to a different location in order to manipulate documents. The arguments are misplaced, because as was stated by the Court of Customs and Patent Appeals in *In re Keller*, 642 F.2d at 426, 208 USPQ at 882:

[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.

The podium aspects of the Applicant’s invention, including a touch panel interface, are disclosed and fully accounted for by the disclosure of Howell.

The Applicant also argues that in his invention a monitor is not employed on the cart or podium but in Maruyama’s system a monitor is employed on the cart. Again, the name of the game is the claim. The Applicant has not shown why any one of his claims excludes the possibility of a monitor being carried by the cart forming a podium. And even if the exclusion is required by the claims, the argument is misplaced because, like the Applicant’s system, Howell’s podium does not carry a monitor and Maruyama is only relied on to put wheels on Howell’s podium.

For the foregoing reasons, the Applicant has not shown error in the rejection of claim 1 over Howell and Maruyama.

The Applicant does not argue the merits of dependent claims 2-5 separately from the merits of independent claim 1. Accordingly, the rejection of claims 2-5 stands and falls with the rejection of independent claim 1.

CONCLUSION

The rejection of claims 1-5 under 35 U.S.C. § 103 as unpatentable over Howell and Maruyama is **affirmed**.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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